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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,867	02/09/2004	Andry Lagsdin	S1174/7029	7229
7590 David M. Driscoll 1201 Canton Avenue Milton, MA 02186			EXAMINER LERNER, AVRAHAM H	
			ART UNIT 3611	PAPER NUMBER
DATE MAILED: 08/04/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/773,867

Applicant(s)

LAGSDIN, ANDRY

Examiner

Avraham Lerner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-14 and 16-29 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 0204,0105.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The Information Disclosure Statements, filed February 9, 2004 and January 3, 2005, are acknowledged and have been considered. Every reference that was listed multiple times in the two Statements has been considered only once.

Election/Restriction

2. Applicant's election without traverse of Group II, claims 10-20 and the embodiment shown in Fig. 54 in the reply filed on May 5, 2005 is acknowledged.

Claim Objections

3. Claim 16 is objected to because of the following informalities: in line 2, "said" should be inserted before "resilient", and "os" should be changed to read "of". Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 10-14 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Mitchell (U.S. Patent No. 3,721,458).

Mitchell discloses an apparatus having all elements as claimed, including a unitary resilient pad (25) which is adapted to be in a downwardly facing orientation for ground engagement; a plurality of support posts (26) extending from said resilient pad at spaced intervals and each *adapted for* engagement with an accommodating slot of a weldment and at least one securing member (27) that is connectable between said resilient pad and said weldment for holding said resilient pad to said weldment, the support posts extending from opposite sides of the pad (see Fig. 2), and are spaced along opposite sides along a linear locus. Note that by virtue of the adapted for language in claim 10, the “accommodating slot” of the weldment has not been positively recited, but merely that the support posts be capable of engaging with such a slot.

6. Claims 18-23 and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Frank (U.S. Patent No. 4,421,290).

Frank discloses a pad having all elements as claimed, including a resilient pad member (8) having opposite ground engaging surfaces, one of which is adapted to be in a downwardly facing orientation for ground engagement, and having opposite support surfaces; and a plurality of mounting lugs, or as in claim 21 support rods (15) including one lug set extending from one support surface side of said resilient pad member for releasable engagement with a corresponding slot set (see Figs. 8 and 9) of one support plate (54) of a weldment, and another lug set extending from an opposite support surface side of said resilient pad member for releasable engagement with a corresponding slot set of another support plate of the weldment, and wherein said resilient pad has a plurality of passages therethrough (see e.g. Fig. 9), each for

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receiving an elongated support member, the opposite free ends of which form said support lugs, the support rod having a “roughened surface” (threaded end) as written in claim 28.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 26 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Frank.

Frank discloses a pad structure having all elements as claimed, except for specifically reciting that the support rods are force fit in the accommodating holes of the pad. This product-by-process limitation does not define over the assembly of Frank, in that “even though product-by-process claims are limited by and defined by the process, determination of the patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

9. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frank in view of Mitchell.

Frank discloses a pad having all elements as claimed, as recited above in detail, except for that the pad is either laminated, as recited in claim 24, or molded as recited in claim 25.

Mitchell discloses that it is known in the art to provide a laminated support pad having a plurality of resilient pad layers inter-engaged by support rods to form a unitary resilient pad.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the support structure of Frank with the laminated pad as taught by Mitchell in order to provide a tough and resilient pad structure that may be easily manufactured and reliably support heavy loads. Regarding the use of a molded pad it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a molded pad as claimed, since it has been held to be within the general skill level of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. See *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

10. Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Avraham Lerner whose telephone number is (571) 272-6647. The examiner can normally be reached on M-F (8:15-5:45) first Wednesday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AVRAHAM LERNER
PRIMARY EXAMINER

A. Lerner 7/25/05

July 25, 2005